

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In Re: : 10-45852  
:   
DERRICK A. MEYLER, : Brooklyn, New York  
:   
Debtor. : December 1, 2010  
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TRANSCRIPT OF (10) MOTION TO DISMISS CASE  
BEFORE THE HONORABLE CARLA E. CRAIG  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: DERRICK MEYLER, Pro Se  
91 Ocean Parkway, Apt. 3F  
Brooklyn, New York 11218

For the Trustee MARK BROUDE, ESQ.  
Robert Geltzer: Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022

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Proceedings recorded by electronic sound recording,  
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1 (Proceedings began at 11:21 a.m.)

2 THE CLERK: Calling the case of Derrick Meyler.

3 MR. GELTZER: You want appearances, Judge?

4 THE COURT: Please.

5 MR. GELTZER: I'm Robert L. Geltzer, the trustee.

6 MR. BROUDE: Mark Broude for Robert Geltzer, the  
7 trustee.

8 THE CLERK: State your name for the record,  
9 please. State your names for the record.

10 MR. MEYLER: Derrick Meyler.

11 THE CLERK: Yes, sir, if you want to speak.

12 MR. ROLL: Huh?

13 THE CLERK: Yes.

14 THE COURT: What is your name, please?

15 MR. ROLL: Steve Roll (ph).

16 THE COURT: Pardon?

17 MR. ROLL: Steve Roll.

18 THE COURT: Okay. And are you a lawyer for Mr.  
19 Meyler?

20 MR. ROLL: No. I'm just his witness.

21 THE COURT: Okay. All right. So this is the  
22 hearing on Mr. Meyler's motion to dismiss this bankruptcy case.  
23 So I'll hear first from Mr. Meyler.

24 MR. MEYLER: Judge, I didn't hear you fully.

25 THE COURT: Beg your pardon?

1 MR. MEYLER: I didn't hear you fully.

2 THE COURT: I said this is the hearing on your  
3 motion to dismiss this bankruptcy case. So I will hear an  
4 opening statement from you.

5 MR. MEYLER: Yes, Judge. I encountered an  
6 accident and I went to an attorney, Ms. Pamela Elisofon, and I  
7 told her that I encountered this accident and what had  
8 transpired. During that time I was also encountering financial  
9 hardships. I -- creditors were calling my home a lot. And she  
10 filed a case against what happened in the accident. And what  
11 transpired was that --

12 THE COURT: What kind of accident was it?

13 MR. MEYLER: I got hit in the face with a  
14 basketball in Brooklyn College, and I was seriously injured.  
15 She advised me to go to Macey & Aleman and take up a bankruptcy  
16 matter because she couldn't loan me -- she didn't want to put  
17 in for the cash advance that I asked for to keep me going. So  
18 I took her advice, I went over to Macey & Aleman, and I met  
19 with Mr. Demetrios Tsatis. And Mr. Tsatis took me and  
20 consulted with me and said what you need to do is that because  
21 you're disabled, after I told him everything, you're disabled,  
22 under the law we will file that you're disabled and you're  
23 exempt from losing your land, your -- your case, and your  
24 properties. I told him I said I don't care about the  
25 properties. And I was assured of all of this. He said yes,

1 you'll go in front of the judge or the trustee and you will  
2 tell them when they ask you if you're a disabled person, you  
3 answer yes. That's his briefing to me before I went to the 341  
4 hearing.

5           When I went and I met with Mr. Geltzer, at that  
6 time he was a trustee, I rose my hand to tell the truth, I told  
7 the entire truth that morning in July. He asked me the  
8 questions except anything about disability, questions such as  
9 how did you get injured, did you have blood under the eye. I  
10 recall him also asking me how many lawsuits you have. At that  
11 point I told him two. He took the envelopes off the cases and  
12 said I own these cases now. I said I'm confused, what do you  
13 mean you own the cases. He says consult with your attorneys.  
14 At the time Mr. Tsatis sent someone else to represent him. So  
15 I consulted back with my attorneys and I called my lawyer with  
16 the two civil cases, and she said to me call Mr. Tsatis and  
17 tell him what went -- what happened. When I told Mr. Tsatis he  
18 said he'll be in touch with me. I had previously sent him some  
19 emails stating to him over the period of time that you said to  
20 me that the disability, under the disability clause or status  
21 it didn't exist. He said to me, I apologize.

22           But then I came here, make a long story short, I  
23 came here the other -- about a month ago or two, and when we  
24 met I told you Mr. Tsatis, I do not want him to represent me  
25 because his stories keep changing, he's apologizing verbally to

1 me, and he doesn't want to give me anything in writing. So I  
2 said I would represent myself. Then I asked you if I could go  
3 ahead and file for my monies back, which I did in Small Claims  
4 Court. I just came out of Small Claims Court the other night  
5 at Livingston Street. They said to me the judge, finally after  
6 three times that Mr. Tsatis, January 31st is going to be the  
7 last day because he asked for adjournments, adjournments,  
8 adjournments. He finally offered me \$650 back. I'm not in  
9 agreement with it. Because I said you did not give me proper  
10 disclosure, and you put me in some serious predicaments.  
11 Because if I was given proper disclosure, as an educated person  
12 I would have been able to make proper decisions. That's it,  
13 Your Honor.

14 THE COURT: Well, why do you want to dismiss your  
15 bankruptcy case?

16 MR. MEYLER: I want to dismiss the bankruptcy case  
17 because if I was given proper disclosure, I would be able to  
18 have still been paid off my creditors and go through with my  
19 cases with my attorney. And if the cases were settled or  
20 either tried I would either pay back my creditors then.

21 THE COURT: But why don't you just want to get  
22 your discharge and let the cases be settled and then pay the  
23 creditors that way?

24 MR. MEYLER: Because I never wanted to be in this  
25 predicament where -- I'm learning as I go along too that these

1 bankruptcy people, they have their own agendas of how they want  
2 to do things. Like Mr. Geltzer said to me on that particular  
3 day what made me very intrigued was he never brought up  
4 anything in the disability that Mr. Tsatis said. But however  
5 what is happening is that it seems to be a connection with Ms.  
6 Elisofon, Mr. Tsatis, and my attorney Ms. Spence, her  
7 correspond with them. All of them are corresponding within  
8 themselves, which makes me say, well, wait a minute here, I  
9 suffered gravely two injuries that almost left me paralyzed,  
10 and I've also suffered seizures, I've had medical bills that  
11 I've paid, I've always been a responsible person. If I can  
12 handle things, I can handle it within my manner, I could have  
13 easily said to my creditors I will pay you back the monies over  
14 the year.

15 THE COURT: But if you -- is it that you want to  
16 get an advance on these lawsuits?

17 MR. MEYLER: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. MEYLER: Yes. Yes.

20 THE COURT: And that's something you can't do in  
21 bankruptcy.

22 MR. MEYLER: Yes.

23 THE COURT: And so that's why you want to dismiss  
24 the case?

25 MR. MEYLER: Exactly, Your Honor.

1 THE COURT: You need the advance because you feel  
2 like you need the money to live on?

3 MR. MEYLER: Yes, Your Honor.

4 THE COURT: All right.

5 MR. MEYLER: It has tied me up. I mean that's  
6 when I said the predicament that they have put me in.

7 THE COURT: Okay. Anything else that you want to  
8 say right now?

9 (Pause.)

10 MR. MEYLER: Yes, Your Honor. Thank you. I  
11 forget certain things that I wanted to say. Thank you. The  
12 \$20,000 that I was asking for, Mr. Geltzer and his personnel  
13 has made a stop to it. They didn't -- yeah.

14 THE COURT: Well, and that's appropriate --

15 MR. MEYLER: Yes.

16 THE COURT: -- in the bankruptcy case.

17 MR. MEYLER: Right. So I said with me not having  
18 control of my own destiny, I've never been used to living like  
19 that.

20 THE COURT: Okay.

21 All right. Mr. Geltzer?

22 MR. BROUDE: Your Honor, the debtor has about  
23 \$150,000 in debt.

24 THE COURT: Well, at this point you have a bar  
25 date set, correct?

1 MR. BROUDE: We have set it, it's for January 18th  
2 of 2011.

3 THE COURT: So far you only have about \$30,000 --

4 MR. BROUDE: That's correct.

5 THE COURT: -- in claims so what --

6 MR. GALLO: The 30, it doesn't include his school  
7 loans, which is approximately \$50,000.

8 THE COURT: Okay.

9 MR. BROUDE: So it's really like 100,000 of  
10 unsecured, 50 of --

11 THE COURT: So we'll have to see how the claims  
12 come in when the --

13 MR. BROUDE: I don't know if the debtor here is  
14 cognizant of the fact that all his creditors might not file  
15 claims but he will get discharge of all those claims.

16 THE COURT: Right.

17 MR. BROUDE: But going back to the point he made,  
18 he said he wanted an advance of the money to live on.

19 THE COURT: Right.

20 MR. BROUDE: Not to pay his creditors.

21 THE COURT: What? Pardon me?

22 MR. BROUDE: Not to pay his creditors but for  
23 money for his own pocket. And --

24 THE COURT: Well, what he -- right, he says that  
25 he can't live now, he needs an advance in order to live.



1 MR. BROUDE: Well, his --

2 THE COURT: I think that's the point he's trying  
3 to make.

4 MR. BROUDE: Right. I mean his -- he doesn't have  
5 to pay his creditors in bankruptcy. If he's out of bankruptcy,  
6 they're going to start hounding him again. He's going to take  
7 this loan, which is going to be anywhere from 15 to 25%, which  
8 is going to turn a \$20,000 advance into about \$100,000, in my  
9 experience in these cases. And he never paid his creditors to  
10 begin with, so what's to say he's going to come back and file  
11 bankruptcy again if the settlement doesn't yield the result  
12 that Mr. Meyler wants here. He's now added new creditors to  
13 his case, which is going to be this advance that he takes in  
14 connection with those loans in connection with his personal  
15 injury actions. There's a lot of speculation here. These  
16 creditors have never been paid to begin with, and he doesn't  
17 want to pay them until the end of his case. If that's what he  
18 wants, then we should be in bankruptcy. Because then there'll  
19 be a stay. They won't collect their debts. Additionally, as  
20 we put in our papers, a creditor wants him to be in bankruptcy  
21 because he believes that he will get paid in bankruptcy his pro  
22 rata share. Outside of bankruptcy this creditor was not paid,  
23 and he has no confidence that he will be paid. And we  
24 submitted that with our papers, Your Honor.

25 THE COURT: How did -- was that affidavit just --

1 that just came in the mail to you or how did that come about?

2 MR. BROUDE: The creditor --

3 THE COURT: How did you come to get that  
4 affidavit?

5 MR. BROUDE: He filed a claim. We -- there were  
6 certain claims filed. I tried to call these creditors when  
7 that happens, and --

8 THE COURT: You call them to solicit them --

9 MR. BROUDE: Information.

10 THE COURT: -- to write affidavits.

11 MR. BROUDE: Yes, to say would you want the debtor  
12 to dismiss this case or do you want it in bankruptcy and have  
13 it proceed accordingly. Only one responded, and it was this  
14 creditor to me. And he submitted the affidavit in support and  
15 to keeping it in bankruptcy. I don't know if he had gotten  
16 even the prior notice of the debtor's motion.

17 THE COURT: So how -- I mean what would be the way  
18 to address the problem of Mr. Meyler not having anything to  
19 live on in the meantime?

20 MR. BROUDE: Well, if I look at his bankruptcy  
21 schedules, his income on disability is 1313 per month. And I  
22 think that's what he's confused here. The disability income is  
23 exempt. That's why the trustee didn't ask about it. He knows  
24 that. That's why he didn't proceed to say I'm going to take  
25 your income for your disa -- for that. It's purely exempt,

1 it's totally exempt. And according to Schedule J, he has about  
2 \$1400 a month of expenses. So he has a negative disposable  
3 income, which I believe is manageable, of just \$87 a month.  
4 It's not -- there's not a huge discrepancy here.

5 And additionally, Your Honor, if we go back to the  
6 PI actions, they've just begun. He hasn't even been deposed in  
7 those actions, they haven't wended their way through state  
8 court. I've spoken to the personal injury counsel. It could be  
9 years before these cases go to trial, be settled, and that's an  
10 accurate statement by the personal injury counsel. Because  
11 we've seen those cases before, and they take years to wend  
12 their way through the courts. And also with respect to those  
13 actions, personal injury counsel is of the opinion that any  
14 advance given to the debtor will hurt those cases. Because  
15 then the defendants will know that they want to settle to stop  
16 the interest on those cases. There's going to come a point  
17 where Mr. Meyler's going to say, wow, you gave me \$20,000, now  
18 it's \$100,000, if we don't settle this this hundred's going to  
19 turn into a 120 and it's going to keep escalating. And the  
20 defendants will not settle, they'll say okay, we'll just delay,  
21 delay, delay. And personal injury counsel has told me that and  
22 has written a letter to that effect to the trustee, that they  
23 believe it would prejudice the personal injury actions in this  
24 matter.

25 THE COURT: Well, would it not -- would it be

1 possible, depending on the amount of claims that are filed, to  
2 get a loan in an amount that would pay off all of the claims  
3 and provide something for Mr. Meyler that would -- so that that  
4 could, that would address the concern of whether the creditors  
5 will be paid.

6 MR. BROUDE: That's about \$150,000.

7 THE COURT: But we don't know where the claims are  
8 going to come in, right?

9 MR. BROUDE: That's correct.

10 THE COURT: Right now I'm seeing 30,000.

11 MR. BROUDE: That's correct, Your Honor. I don't  
12 believe these lenders will loan money once they see a  
13 bankruptcy. That's --

14 THE COURT: Well, with the trustee's consent they  
15 might.

16 MR. BROUDE: But what happens --

17 THE COURT: They couldn't do it without the  
18 trustee's consent.

19 MR. BROUDE: Right.

20 MR. GELTZER: May I for a moment, Your Honor?

21 THE COURT: Yes, Mr. Geltzer.

22 MR. GELTZER: Judge, what I'm somewhat concerned  
23 about is even -- you know, it's highly unlikely that cases get  
24 tried, personal injury cases get tried in state court.  
25 Settlement is far the more usual course by which they proceed.

1 When it comes --

2 THE COURT: Can you be closer to the microphone?

3 It's hard to hear you.

4 MR. GELTZER: Oh. I'm sorry. It's far more usual  
5 that personal injury cases get settled than tried in state  
6 court. When that day comes --

7 THE COURT: Right, trial is unusual.

8 MR. GELTZER: Trial is very unusual. And I can  
9 attach a far greater degree of rationality to a settlement than  
10 perhaps even the debtor who's so personally involved in it can.

11 THE COURT: What --

12 MR. GELTZER: So that --

13 THE COURT: What do you mean by that?

14 MR. GELTZER: Sometimes plaintiffs think they have  
15 the most wonderful case based upon liability and damages, but  
16 that may not be the case. And sometimes I have authorized  
17 settlements, and whether Your Honor or another bankruptcy judge  
18 has approved them even contrary to what the debtor wanted.  
19 Because I impose a degree of rationality as to what's in the  
20 best interest of creditors while at the same time looking at  
21 the best interest for the debtor. In these cases the  
22 estimation of the damages is about a total of about a half a  
23 million dollars, but then again no depositions have even been  
24 taken in the underlying personal injury cases. That could  
25 change. It could change by one statement of one witness as to

1 what happened. They're in their early stages. I just -- I  
2 don't know how much I'm encumbering if I were to agree to let  
3 them take a post-petition loan.

4 THE COURT: But my point is --

5 MR. GELTZER: I don't know if it's in the  
6 debtor's interest.

7 THE COURT: But, Mr. Geltzer, my point would be,  
8 the question I was asking is we -- depending on where the level  
9 of -- we would have to wait until the bar date passes.

10 MR. GELTZER: Right.

11 THE COURT: We would see how many claims, what the  
12 total amount of claims that have been filed.

13 MR. GELTZER: Right.

14 THE COURT: You would I suppose then have to add  
15 the -- even if the student loan claim had not -- even if they  
16 hadn't filed a proof of claim you'd still have to look at that.

17 MR. GELTZER: If they're not dischargeable.

18 THE COURT: To think of about that. Although you  
19 wouldn't have to think about it in the context of the  
20 bankruptcy, correct? They wouldn't be entitled to participate  
21 in the distribution.

22 MR. BROUDE: That's correct.

23 MR. GELTZER: All right. But they would still be  
24 going after him.

25 THE COURT: That's true, that's right. So what

1 you could do is, I suppose, see where the claims come in and,  
2 if there in fact is \$500,000 possibly available as a recovery,  
3 if the debtor really wants to borrow, to take an advance on  
4 that to get money now, if he's able to borrow enough to pay all  
5 the creditors out, it could be paid out and he could get a  
6 discharge.

7 MR. GELTZER: If he can pay all the creditors in  
8 full and administrative costs, that would be fine, but --

9 THE COURT: Well, there isn't going to be all that  
10 much in administrative --

11 MR. GELTZER: No.

12 THE COURT: -- costs, presumably.

13 MR. GELTZER: No. But there's also the PI  
14 attorneys who are going to get a third and --

15 THE COURT: Well, they'll get a third of any  
16 recovery. They wouldn't necessarily have to be paid in the  
17 context of a -- you could dismiss -- couldn't you fully  
18 administer this case, pay the creditors with the proceeds of a  
19 loan and leave, abandon -- I mean and then the personal injury  
20 action belongs to Mr. Meyler, and the PI attorneys get whatever  
21 they get?

22 MR. GELTZER: Yes, Your Honor. The thing is with  
23 them taking their third and with whatever he gets, he may at  
24 the end of the day -- after these creditors are paid in full  
25 with interest, he may have put himself into more debt with the

1 loan he took out --

2 THE COURT: Yes, I under --

3 MR. GELTZER: -- in order to do that.

4 THE COURT: I understand that. And that is a  
5 concern. But wouldn't he --

6 MR. GELTZER: And then be back here.

7 THE COURT: Wouldn't he have to be -- wouldn't  
8 that have to be something for him to consider for himself?

9 MR. GELTZER: You're right, yes, Your Honor.  
10 Certainly it's his decision whether he wants --

11 THE COURT: I don't --

12 MR. GELTZER: -- to assume that risk.

13 THE COURT: -- know how severe his need for money  
14 in the present, at the --

15 MR. GELTZER: I'm sorry?

16 THE COURT: I'm not sure how badly he needs money  
17 now.

18 MR. GELTZER: I understand, and I'm not  
19 unsympathetic. I'm trying to look down the road that here we  
20 have a debtor who says he had an attorney who either didn't  
21 explain all the ramifications correctly or he the debtor didn't  
22 understand them. I can tell you at the 341 meeting I was very  
23 clear and instructed the personal injury attorney to make it  
24 even clearer with respect to the personal injury actions. And  
25 the --



1 THE COURT: The personal injury attorney attended  
2 the 341 meeting?

3 MR. GELTZER: He was presented by counsel. I  
4 don't know if it was this particular --

5 MR. BROUDE: No.

6 THE COURT: It was probably his bankruptcy lawyer,  
7 right?

8 MR. BROUDE: It was the bankruptcy lawyer.

9 MR. GELTZER: Did I say the PI attorney?

10 THE COURT: Yes, you did.

11 MR. GELTZER: I'm sorry, I'm sorry. And the  
12 debtor didn't quite understand that, and so now we're putting  
13 that debtor who has demonstrated somewhat of a lack of  
14 understanding in the position to decide whether after going  
15 through a bankruptcy that's going to be on his record for a  
16 long time, put him in a position of borrowing more money at an  
17 effectual interest rate of 25% thereabouts or more and perhaps  
18 be a debtor again. I'm really not trying to hurt the debtor,  
19 I'm really trying to help him and try to help him foresee the  
20 consequences of that action whereas if we stay in bankruptcy  
21 he's getting by, he's getting by tightly but he seems to be  
22 getting by. If he stays in bankruptcy, if we settle the  
23 personal injury cases, we'll pay them in full whatever -- if  
24 there is a surplus, certainly he gets the surplus, and he can  
25 be on his way. I think it's better for him, it's better for

1 creditors. I really do think it's better for him.

2 THE COURT: What relevance, if any, do you think  
3 there is to Mr. Meyler's allegation that his attorney  
4 incorrectly informed him about the ramifications of filing for  
5 bankruptcy?

6 MR. GELTZER: I don't want to speculate as to  
7 their conversation when I wasn't there. However, I can say  
8 this.

9 THE COURT: But I'm saying -- assuming that what  
10 he's saying is accurate, and I'm not saying that I necessarily  
11 believe that but assuming that it was, would that be relevant  
12 in your mind?

13 MR. GELTZER: It would not be irrelevant but it  
14 would not be dispositive. Because at the 341 meeting my  
15 question in 25,000 meetings over 20 years has been to say have  
16 you read these, are they true and complete, do they show  
17 everything you own and everything you owe.

18 THE COURT: But, Mr. Geltzer, by the time he's at  
19 the 341 meeting with you he's already filed for bankruptcy.  
20 He's saying that if he knew that he would be -- that he would  
21 lose control of his personal injury action that he wouldn't  
22 have filed.

23 MR. GELTZER: And that's what I was trying to  
24 respond to. I don't know what he and his attorney -- I don't  
25 know what the substance of their conversation is. But it seems

1 to me that they did discuss it. Because the lawsuits are  
2 listed on Schedule B and there was an exemption claimed though  
3 not properly on Schedule C. The debtor does have the  
4 information sheet that -- where's the -- and the information  
5 sheet, which I asked him if they've read it. It says on the  
6 Chapter 7 "you may claim certain of your property as exempt  
7 under law. A trustee may have the right to take possession,  
8 sell the remaining property that is not exempt," and I  
9 explained that. I instructed the attorney to explain that.  
10 Can I tell you that he did? Absolutely not. I don't know, I  
11 don't know what their conversation was. But it seems to me  
12 that this is a knowledgeable debtor.

13 THE COURT: Would I need to get Mr. Tsatis here in  
14 to testify about what he did tell the debtor?

15 MR. GELTZER: I would have no problem with that,  
16 certainly. I can't tell you what they said between themselves.

17 THE COURT: Right. So why wouldn't we wait and  
18 see where the claims -- how the claims come in and, you know,  
19 what level of claims are filed and see whether if the debtor  
20 would be able to get a loan to pay those amounts out --

21 MR. GELTZER: That's fine. In fact we --

22 THE COURT: -- at the present time?

23 MR. GELTZER: Mark had called Mr. Meyler several  
24 times in the last couple days to try to get his consent to  
25 adjourn this to a date past the bar date for that very reason,

1 but we didn't get a return call from him. This is a debtor  
2 though who has participated in this bankruptcy process.

3 THE COURT: Right.

4 MR. GELTZER: It's not that he hasn't shown up,  
5 it's not that matters haven't been explained to him, it's not  
6 that he hasn't signed papers. And I'm not looking to punish  
7 him. He's done nothing that's wrong. But it seems like this  
8 has been explained to him and moreover it seems like this is  
9 better for him. Whatever you'd like to do, Your Honor, you --

10 THE COURT: So I guess your position would be that  
11 having filed the bankruptcy, we have to take into consideration  
12 the interest of creditors and therefore would not be able just  
13 to dismiss the case without there being some mechanism in place  
14 to assure that the creditors are going to be paid.

15 MR. GELTZER: Well, it's --

16 THE COURT: Is that your view?

17 MR. GELTZER: -- my position because that's the  
18 law.

19 THE COURT: Beg your pardon?

20 MR. GELTZER: That's my position because that's  
21 the law that their interests have to be taken into account.

22 THE COURT: Right.

23 MR. BROUDE: Your Honor, if I can just make one  
24 comment. You had suggested let's look at the bar date, see  
25 what the claims are.

1 THE COURT: Right.

2 MR. BROUDE: And today it's \$30,000. And say the  
3 bar date passes and it's \$30,000 and for some reason he wants  
4 to do a structured dismissal to pay those 30. The other 65 in  
5 that it's dismissed can go after him.

6 THE COURT: The other --

7 MR. BROUDE: The other creditors.

8 THE COURT: I'm talking about him getting a  
9 discharge. Why wouldn't he be able to get a discharge?

10 MR. BROUDE: Well, if he gets a discharge, then  
11 why are we dismissing the case, why don't we see it to the end  
12 of the bankruptcy?

13 MR. GELTZER: The student loans aren't going to be  
14 discharged.

15 THE COURT: But he does -- the point is he wants  
16 to get -- he'd have to borrow the money, wouldn't he? The  
17 point is he wants to -- he wants the money now, if I'm  
18 understanding him correctly. So he would have to borrow -- I'm  
19 talking about a scenario, not a structured dismissal but an  
20 administration of this case with the --

21 MR. BROUDE: It's kind of like a more --

22 THE COURT: -- proceed of the loan.

23 MR. BROUDE: -- quick administration by --

24 THE COURT: Right.

25 MR. BROUDE: -- getting a loan.

1 THE COURT: Right.

2 MR. BROUDE: I'm not sure what the benefit to the  
3 debtor would be.

4 MR. GELTZER: You know what --

5 THE COURT: The benefit is he gets the money now.

6 MR. GELTZER: What I'm going to say to you now is  
7 I'm contradicting what I said a few moments ago in that on one  
8 hand this debtor seems to know what this process is about. On  
9 the other hand the debtor kind of has intimated to us that he  
10 wants some money from us. We obviously have no money to give  
11 him, to lend to him. In addition, it seems that the debtor  
12 wants to be out of bankruptcy so that he can, as he puts it, be  
13 his own -- take care of his own destiny.

14 THE COURT: Right.

15 MR. GELTZER: On the other hand he wants to keep  
16 these creditors at bay.

17 THE COURT: Well, if he gets a discharge he will  
18 have succeeded in that goal.

19 MR. GELTZER: Not with respect to the student  
20 loans though.

21 THE COURT: Not with respect to the student loans,  
22 but that's the case, you know, in or out of bankruptcy.

23 MR. GELTZER: That's true. But if it's in  
24 bankruptcy and the personal injury actions pay off, we can pay  
25 off everybody. I don't know what else to tell you, Judge.

1 THE COURT: But that wouldn't -- the debtor's  
2 interest here is in getting a discharge of his dischargeable  
3 debts, correct?

4 MR. GELTZER: Yes.

5 THE COURT: So if he's able to do that, why  
6 wouldn't that be the best resolution? I mean I'm not saying  
7 that -- at least if that's what he wants to do.

8 MR. GELTZER: It may be. This may all be an  
9 exercise in futility. Perhaps the Court would consider asking  
10 the debtor if any of these potential lenders were willing to  
11 lend him any money, what stage that was in. Lenders don't want  
12 to lend money on PI actions unless they have a reasonable  
13 certainty that the PI action is going to pay off, especially  
14 for someone who's in bankruptcy. And it would seem to me -- I  
15 don't know that business although I have a debtor who's in that  
16 business, but it would seem to me that lenders might be adverse  
17 to making a deal that early in the PI action process.

18 THE COURT: But we don't know though.

19 MR. GELTZER: Perhaps --

20 THE COURT: If we're talking about claims that are  
21 in the -- you know, at a relatively low level and actions that  
22 are maybe worth \$500,000, maybe he can borrow enough to pay  
23 them off.

24 MR. GELTZER: I have to say I don't know either.  
25 I don't know where that stands. But maybe he can tell the

1 Court.

2 THE COURT: All right. Mr. Meyler.

3 MR. MEYLER: Your Honor, my witness was here when  
4 the last time he said for me and Mr. Broude to work it out and  
5 to send him a stipulation and to --

6 THE COURT: I didn't say to Mr. Broude work it out  
7 and that he should send you a stipulation. I've listened to  
8 the audio of that hearing. What I said was maybe it would be  
9 possible to work it out, I did not --

10 MR. MEYLER: Yes. Yes, Judge.

11 THE COURT: -- tell anyone --

12 MR. MEYLER: I apologize.

13 THE COURT: -- that they had to do that.

14 MR. MEYLER: Yes, maybe it's possible that you and  
15 Mr. Meyler can work it out, absolutely.

16 THE COURT: And apparently it wasn't.

17 MR. MEYLER: Right. Mister -- I sent Mr. Broude  
18 all -- a listing of how I would go about paying all the --

19 THE COURT: Okay. See, Mr. Meyler, the problem is  
20 once I dismiss this bankruptcy case I have no assurance  
21 whatsoever that you're going to pay anybody.

22 MR. MEYLER: And that's why I did this and showed  
23 Mr. Broude, and I sent it to all the creditors.

24 THE COURT: Right.

25 MR. MEYLER: And according to him, he just said



1 that he got on the phone and spoke to the creditors and only  
2 one responded.

3 THE COURT: Right, one of them said I don't want  
4 you to dismiss this case.

5 MR. MEYLER: Exactly. And I haven't heard back  
6 anything from the creditors. But, however, the whole purpose  
7 of this is that --

8 THE COURT: That isn't necessarily surprising  
9 given that many of them are for, you know, amounts that were  
10 relatively small amounts and that they are institutional  
11 creditors. It's not that surprising that we wouldn't hear back  
12 from them. That doesn't mean, I don't interpret their silence  
13 on this or their failure to object as being consent to the  
14 dismissal of the case.

15 MR. MEYLER: Okay. I just want to say Mr. Geltzer  
16 has also stopped the loan advance. Because he sent me a  
17 letter, also sent Ms. Spence, my attorney --

18 THE COURT: Well, but he did that rightly so.  
19 Because he wasn't -- you can't take an advance for yourself on  
20 these lawsuits and for your own use. You're taking -- these  
21 are, the lawsuits now are an asset that are supposed to be used  
22 to pay your creditors. In a bankruptcy case you get a  
23 discharge, meaning that your creditors can't pursue you anymore  
24 for dischargeable debts. Your student loans, that's a  
25 different thing, they are not dischargeable unless you can show

1 that you are entitled to a hardship discharge, which maybe you  
2 would be. You might be entitled to that, I don't know. But  
3 you'd have to -- to get that you would have to start an action  
4 in this court and get it to seek a declaration that you're  
5 entitled to a hardship discharge of your student loans. But in  
6 the absence of that you have to pay your student loans and your  
7 other creditors or your other creditors, the debts are  
8 discharged. But the price you pay for that is that whatever  
9 assets you have, which in this case would include your personal  
10 injury action is then an asset that has to be administered by  
11 the trustee for the benefit of your creditors. So that means  
12 that for you to take a loan out for your own personal use that  
13 would be secured by that is not something you'd be allowed to  
14 do during the bankruptcy case.

15 Now, maybe your best course of action would be to, if you  
16 want to in fact to do this, maybe you would be -- maybe we  
17 should see where the bar date order comes in. Maybe you're  
18 better off pursuing your student loan -- maybe you're better  
19 off seeking a discharge of your student loans in the bankruptcy  
20 case, and either waiting for the outcome of the personal injury  
21 action or if the other creditors are in a small enough amount  
22 that they could be paid off through a loan, then getting a  
23 loan. But I think what Mr. Geltzer is saying, and rightly so,  
24 is that to get a loan like this may not be in your best  
25 interest long-term. The interest rate is very high. You could

1 find that you need to go back into bankruptcy after this is all  
2 over. You may end up with nothing whereas if -- out of the  
3 student loans except what -- out of the personal injury action  
4 other than what you get through the loan. Whereas you might  
5 find that you have a much bigger recovery at the end of the day  
6 if you just allow, if you allow these student loans -- I'm  
7 sorry, I keep saying student loan when I mean to say personal  
8 injury -- if you allow these personal injury actions to be  
9 pursued to a conclusion.

10 MR. MEYLER: Okay. Then if I allow Mr. Geltzer to  
11 pursue the personal injury matters --

12 THE COURT: Yes.

13 MR. MEYLER: -- that's not what I wanted. I  
14 wanted the entire thing dismissed. I wanted to have control  
15 myself to whatever monies that I would do to handle my  
16 business.

17 THE COURT: Right.

18 MR. MEYLER: I have been, I have always been a  
19 responsible person. I know you don't know me, Your Honor, but  
20 if anyone were to look up my record --

21 THE COURT: But why did you file for bankruptcy  
22 then?

23 MR. MEYLER: Because I was duped by Mr. Tsatis.

24 THE COURT: But you must have had debts, you must  
25 have had -- why'd you go to see Mr. Tsatis then?

1 MR. MEYLER: I tell you why. My first attorney on  
2 the case, Ms. Elisofon, she said to me when I asked her for the  
3 cash advance at the time, she said the best thing to do is to  
4 file bankruptcy. Because Discover Card had taken me, threaten  
5 to take me to court for the monies that I had borrowed because  
6 they said that I need to repay them. I explained to them that  
7 I was in an injury and I wasn't able to make my payments. So I  
8 had all this outstanding, I had medical bills prior to, all  
9 these things. Everything was just pouring down on me. A  
10 financial burden, hardship like you said. I went and consulted  
11 with people who have intelligence and expertise in certain  
12 areas. Ms. Elisofon then was the one who said that she filed  
13 the case incorrectly. Mr. Tsatis, who you said, you know,  
14 there's a possibility of you even -- if you were to order him  
15 to come and testify, he sent me a letter saying in his letter  
16 also that he's willing to give me a refund and he's -- you  
17 know, I'm just -- I've been overwhelmed. To answer your  
18 question, I filed bankruptcy because I was overwhelmed with the  
19 phone calls, the headache, I was recovering, I was suffering,  
20 and financially I lost my job, I lost everything. And then to  
21 understand that when I met with Mr. Geltzer he's telling me I  
22 own your cases now.

23 THE COURT: But that is what happens in bankruptcy  
24 as I just explained to you. The trustee then becomes in charge  
25 of administering your assets for the benefit of your creditors.

1 In exchange for that you get a discharge so that they can't  
2 pursue you anymore.

3 MR. MEYLER: But I didn't get proper disclosure  
4 from Mr. Tsatis to make --

5 THE COURT: You know, I am not sure --

6 MR. MEYLER: -- proper decisions.

7 THE COURT: I don't -- nobody has really discussed  
8 the law in that area, but I'm not -- first of all, I don't  
9 think that I would -- I believe -- I don't believe that Mr.  
10 Tsatis necessarily believed that he told you the wrong thing.  
11 I would have to hear from him in order to --

12 MR. MEYLER: I have an email from --

13 THE COURT: -- in order to -- what's that?

14 MR. MEYLER: I have a email that shows that I was  
15 in correspondence to him. And I said to him why have you not  
16 filed under the disability law as you said? And he never did.

17 THE COURT: Well, there is -- I don't know what  
18 disability law you're talking about.

19 MR. MEYLER: That's what -- I want to discuss  
20 where I want a discharge on that grounds, that there was no  
21 disability --

22 THE COURT: Oh, but see --

23 MR. MEYLER: -- that --

24 THE COURT: -- I'm not necessarily, I don't  
25 necessarily believe that he told you that your lawsuit would be

1 exempt in toto because of the fact that you're disabled. I  
2 don't know that -- I would have to ask him whether he said that  
3 or not, and then I would have to assess his credibility and  
4 yours. Because that, as far as I understand it, that is not  
5 the law and I've never heard that. I find it hard to believe  
6 that a lawyer would tell you that.

7 MR. MEYLER: Well, Your Honor, that is what  
8 happened. I just want it discharged based on all these things  
9 that I said.

10 THE COURT: But the problem is, like I said, if I  
11 just, if I were to just say okay, fine, your case is dismissed,  
12 good-bye, then I have -- there is -- I am obligated to take  
13 into account the interests of your creditors. Your creditors,  
14 which we know, we have at least \$30,000 worth of creditors.  
15 Then we have your student loan debt. And I have no assurance  
16 that they would be paid. There's no way for me to have any  
17 assurance that you're going to pay them. You tell me well, I  
18 will, but I don't know you will, I don't know that you will.

19 MR. MEYLER: And --

20 THE COURT: I have no way of ensuring that.

21 MR. MEYLER: That's why --

22 THE COURT: Unless it's done in the context either  
23 in the form of an order in the context of this bankruptcy case  
24 or unless you get a loan that then is paid out and then fund  
25 distributions that would be made by the trustee in this

1 bankruptcy case.

2 MR. MEYLER: And that's what I said in my letter  
3 certified mail directing him with such. And I don't want any  
4 money, I want the creditors to be paid first.

5 THE COURT: But you directed who, the --

6 MR. MEYLER: Mr. Geltzer and Mr. Broude.

7 THE COURT: Right. Well, but that's right. But  
8 we can't -- once we dismiss this case they're out of the  
9 picture, they're not involved anymore. Then you go ahead and  
10 do whatever you want to with the personal injury action. It  
11 could take a number of years before it yields any results. And  
12 I have no way of knowing whether or not you paid your creditors  
13 or not. So in the context of the way this case is now, the  
14 facts of this case now, it's hard for me to see that it's in  
15 the best interest of your creditors for this case to be  
16 dismissed.

17 MR. MEYLER: And I also contacted Ms. Spence and  
18 sent her the said letter and ordered her that no money should  
19 come to me until all the creditors are paid and remittance me  
20 the balance.

21 THE COURT: Well, if that's what you want to do,  
22 then the case should probably remain in bankruptcy.

23 MR. MEYLER: But then it's -- they --

24 THE COURT: And you could change your instructions  
25 to Ms. Spence anytime you want to.

1 MR. MEYLER: But here's what happens now.

2 THE COURT: And Ms. Spence is going to be --

3 MR. MEYLER: They --

4 THE COURT: Ms. Spence is not going to be able to  
5 pay your --

6 MR. MEYLER: There's a con --

7 THE COURT: Let me continue. You tell Ms. Spence,  
8 who is your personal injury lawyer, that you want her to pay  
9 your creditors before she pays you. She's not in that  
10 business. That's not her -- her job is not to write checks to  
11 different -- to creditors in amounts that you indicate. She  
12 would give you -- she would say that's not my job, I'm your  
13 personal injury lawyer, whatever recovery we receive, that  
14 would go to you and it would be up to you to take care of that.  
15 I have no assurance that that's going to be done. That's what  
16 bankruptcy accomplishes is that it provides a structure where  
17 we know that the creditors will get paid. And you get a  
18 discharge.

19 MR. MEYLER: There seems to be a conflict with Mr.  
20 Geltzer. Because the conflict is this. He doesn't want to  
21 give me a loan so that I can live and do what I need to do to  
22 survive.

23 THE COURT: Right. Well, he --

24 MR. MEYLER: And --

25 THE COURT: -- that's what -- he won't do --



1       that's not -- that can't happen in the bankruptcy.

2               MR. MEYLER: But that's what he's doing.

3               THE COURT: Right, he -- I'm saying he cannot --  
4       you would not -- in a bankruptcy -- as long as this bankruptcy  
5       case is going on you cannot get a loan for yourself personally.  
6       That can't happen.

7               MR. MEYLER: And this is why I'm saying from the  
8       beginning, Judge, that Mr. Tsatis by not giving me proper  
9       disclosure in all these things lead me here today --

10              THE COURT: I'm not sure I --

11              MR. MEYLER: -- to cause for dismissal.

12              THE COURT: Number one, I'm not sure I believe  
13       that. As again I would have to hear from Mr. Tsatis I think in  
14       order to assess whether that's credible or not. And, number  
15       two, even if it were true, that might give you some kind of a  
16       claim against Mr. Tsatis but I'm not sure that it changes the  
17       fact that I need to take into consideration the interests of  
18       your creditors.

19              MR. MEYLER: And in the meantime I'm tied up like  
20       this, Your Honor. And what do I live on, 1200 a month? He  
21       claimed it was 1300. I'm paying \$110.50 for Medicare now, so  
22       it's 1200 a month I get from SSD, not 1300 on SSD. I have a  
23       total disability. I've been paying a aide to help me and all  
24       these things. At the end of the month I have nothing.

25              THE COURT: Well, here's what you might be able to

1 do is you might -- I mean if you could figure out how to live  
2 on your SSD, you might be better off in the long run, because  
3 you might -- the amount that you would have to pay in interest  
4 to a lender would be very, it's very high. I think these  
5 lenders charge you -- you'd have to get all the information  
6 from them but they tend to charge very high rates of interest,  
7 the lenders who lend on personal injury actions. So it might  
8 be, if you could scrape by and wait until you actually get a  
9 payout from your personal injury action, that that would maybe  
10 be in your best interest possibly. But that's, again I think  
11 that's probably the decision you have to make.

12 MR. MEYLER: I know.

13 THE COURT: But another possibility would be for  
14 you to, if you can get a loan to pay off your creditors, to do  
15 that and then let Mr. Geltzer distribute those monies in this  
16 bankruptcy case, you get a discharge. And in terms of your  
17 student loans, if you in fact are disabled you might be  
18 entitled to a hardship discharge, and that's something that you  
19 should look into. You can -- and that's only something you can  
20 get in this bankruptcy case.

21 MR. MEYLER: Yes, Your Honor.

22 THE COURT: If you dismiss this case you get --  
23 there's no discharge of your student loans or anything else.

24 MR. MEYLER: I want a discharge, Your Honor.

25 THE COURT: Well, the only way you can get a

1 discharge is in the bankruptcy.

2 MR. MEYLER: Yes.

3 THE COURT: And if this bankruptcy case is  
4 dismissed you don't get a discharge.

5 MR. MEYLER: Yes, I want that.

6 THE COURT: Okay. So that's what you would have  
7 to -- you can't dismiss your bankruptcy case and get a  
8 discharge. Once you -- in order to get a discharge, for you to  
9 get a discharge this case has to be administered. So the only  
10 question is how it would be administered. Whether it would be  
11 administered through -- whether you would wait for the personal  
12 injury action to pay off or whether you would, if you can, get  
13 a loan to pay your creditors before that. So but either -- but  
14 you can't dismiss the case and get a discharge. And again as  
15 far as your student loan is concerned you might need to look  
16 into whether you can get a hardship discharge. But if there's  
17 going to be money, I guess if there's going to be money at the  
18 end of the day, the personal injury -- the student loan people  
19 are going to be entitled to receive that.

20 MR. MEYLER: I definitely need a hardship  
21 discharge, Your Honor. I've been overwhelmed. The hardship  
22 discharge is the rightful way to go.

23 THE COURT: Yeah, but only with the -- but even --  
24 I think -- I hope I didn't -- I'm not saying something that is  
25 giving you --

1 MR. MEYLER: Your Honor --

2 THE COURT: -- the idea that you --

3 MR. MEYLER: -- can I sit down because my back  
4 hurts.

5 THE COURT: -- that you're entitled to more than  
6 you are. The student loan lender would be entitled to  
7 participate would be entitled to be paid out of the proceeds of  
8 your PI action like all your other creditors.

9 MR. MEYLER: Yes. That's what I want, Your Honor.  
10 Yes, Your Honor.

11 THE COURT: So, in other words, you would like to  
12 stay in bankruptcy then? Just a minute, please.

13 [Pause in proceedings.]

14 MR. MEYLER: Can I have Mr. Roll just say that?

15 MR. ROLL: Your Honor, he's saying that you don't  
16 understand his theory as you're speaking. He said he don't  
17 mind this case administrated by whoever it is (indiscernible)  
18 is kind of discharge. But at the same time you want him to  
19 monitor his case before (indiscernible).

20 THE COURT: Okay, I'm not following you. Can you  
21 repeat that? I didn't understand that. I'm sorry.

22 MR. ROLL: Maybe should I come up front?

23 THE COURT: Yes, that would be helpful. I think I  
24 can hear you better that way.

25 MR. ROLL: Your Honor, he's saying that he is

1 overwhelmed by what is happening to him.

2 MR. GELTZER: I'm sorry, I can't hear him, Your  
3 Honor.

4 THE COURT: Okay. Speak into the microphone.

5 MR. ROLL: He's saying that he's overwhelmed with  
6 all that is happening. As you stated, he said he don't mind  
7 before you get the settlement money that is discharged from --  
8 it's not that he's totally discharged, he just want to be these  
9 people off his back, he'd rather settle for the -- what do you  
10 call this thing?

11 THE COURT: I'm not -- I don't know what you're  
12 saying, I'm sorry.

13 MR. ROLL: What you stated just now, he's saying  
14 that he'd rather go with that and wait for the settlement  
15 money.

16 THE COURT: Okay. So that means that that would -  
17 - so in other words am I understanding correctly you want to  
18 stay in the -- that you don't want to dismiss the bankruptcy  
19 case?

20 MR. ROLL: He want to dismiss it, Judge, but at  
21 the same time he's saying that if he could get all these people  
22 off his back and --

23 THE COURT: But he can't do both of those things.  
24 If you dismiss it, if he dismisses -- if this were dismissed,  
25 which I'm not sure I would allow it to be dismissed, but

1 assuming that I would, that it could be dismissed, he would not  
2 get a discharge, these people would not be off his back, he  
3 would have no relief from his creditors at all, any of them.

4 MR. ROLL: Okay. But what about the one that they  
5 have mentioned about the hardship discharge?

6 THE COURT: Well, that's -- absolutely, that one  
7 would not -- a student loan debt is not entitled to be  
8 discharged in bankruptcy unless you are qualified for a  
9 hardship discharge.

10 MR. ROLL: And what about if he --

11 THE COURT: And even -- but I'm saying that even  
12 if he were able to get a hardship discharge, if he's got --  
13 that the proceeds of the personal injury action are sufficient  
14 to pay it, they would still be entitled to participate with  
15 other creditors in that.

16 MR. ROLL: What does he do now? Because he wants  
17 some form of relief from these people.

18 THE COURT: Well, you have to either -- I think  
19 he's going to --

20 THE CLERK: You have to step away from the  
21 microphone.

22 MR. ROLL: Oh, away from it?

23 THE COURT: Okay. He's going to -- in order to  
24 get a discharge he's going to have to -- this bankruptcy case  
25 has to be administered.

1 MR. ROLL: Okay. He understand that part.

2 THE COURT: Okay. So he can't dismiss this case  
3 if he wants the discharge.

4 MR. ROLL: So the part that you mention about --

5 THE COURT: He would either have to get -- he  
6 would either have to wait in bankruptcy till the personal  
7 injury action settled and then allow that -- and then the  
8 trustee would administer those funds and pay his creditors.

9 MR. ROLL: And what about if he don't want to  
10 wait?

11 THE COURT: If he doesn't want to wait, he would  
12 have to see if he can get a loan --

13 MR. ROLL: Yes, Your Honor. Yes, Your Honor.  
14 He --

15 THE COURT: -- in an amount that would be  
16 sufficient to --

17 MR. ROLL: Yes, Your Honor, he asked for that  
18 amount that he want no money, he contact his personal PI  
19 lawyer, stating that he wanted to pay off Mr. Geltzer, whoever,  
20 and they stopped him from getting it.

21 THE COURT: Well, that's right. He can't do that  
22 in bankruptcy, at least not unless the trustee consents to it.  
23 Let me see if I can explain this. Mr. Meyler cannot take money  
24 out, cannot borrow money using his personal injury action as  
25 security for his own use in this bankruptcy case.

1 MR. ROLL: I understand, Your Honor, but --

2 THE COURT: He could, if the trustee were to  
3 consent to it, see if he could borrow enough money to pay all  
4 of his creditors.

5 MR. ROLL: But you mentioned a part with the  
6 student loan, Your Honor.

7 THE COURT: Okay. And I'm afraid I said something  
8 about the student loan that has misled you. A student loan is  
9 not discharged at all ever --

10 MR. ROLL: Yes, Your Honor.

11 THE COURT: -- in bankruptcy except if you're  
12 entitled to a hardship discharge.

13 MR. ROLL: Yes.

14 THE COURT: But even if you would be entitled to a  
15 hardship discharge they would still be entitled to receive the  
16 amount of the -- their share of settlement in the personal  
17 injury action.

18 MR. ROLL: Mr. Meyler contacted her personal, his  
19 personal attorney, his personal attorney to pay them off, and  
20 he told the lawyer that he don't want no money, he wants to pay  
21 off both these creditors. And I don't know what happened, and  
22 that's what he wanted. He don't want no personal money for  
23 himself. He told his lawyer that.

24 THE COURT: Well, then why doesn't he just -- why  
25 does he -- if he doesn't want personal money, why does he want



1 to dismiss the case? It makes no sense.

2 MR. ROLL: Can I say something? What Mr. Meyler  
3 is trying to explain --

4 THE CLERK: You have to speak into --

5 MR. ROLL: He wanted the money for personal but  
6 now he changed his mind to pay them off because he's tired of  
7 them. That's what --

8 THE COURT: Okay, I understand that. But that may  
9 -- he can't -- the only way he could do -- well, first of all,  
10 he would have to wait until the bar date passes to see what his  
11 creditors are. Then he would have to see whether it would be  
12 possible to borrow an amount of money that would be sufficient  
13 to pay them off.

14 MR. ROLL: Yes, he attempted that and the trustee,  
15 as he said, they got involved. And he wrote a second letter of  
16 stipulation stating that he don't want no personal money for  
17 himself, he'd rather pay off --

18 THE COURT: Well, but that doesn't make any sense.  
19 That doesn't make any sense. The only reason to do this from  
20 Mr. Meyler's point of view would be if he needs money now and  
21 needs to borrow money for himself personally now that he  
22 wouldn't be able to do in bankruptcy. Okay? It makes no sense  
23 to borrow money in an amount that's sufficient only to pay his  
24 creditors and then to be encumbered, with his personal injury  
25 action be encumbered by that debt. See, do you understand that

1 if you borrow, let's say -- let's say you borrow \$50,000 now.  
2 You're going to have to -- when the personal injury action  
3 settles you're going to have to pay a lot more than \$50,000 --

4 MR. ROLL: Understood but --

5 THE COURT: -- to --

6 MR. ROLL: -- plus with interest. I understand.

7 THE COURT: Right, interest at a very high rate.

8 I think they tend to charge, you know, way into the double  
9 digits.

10 MR. ROLL: I understood. But he's saying, Your  
11 Honor --

12 THE COURT: So, in other words, you would end up -  
13 - so that instead of waiting to get that money you're going to  
14 end up having to pay maybe twice that amount or more. Or you  
15 may not see any benefit from --

16 MR. ROLL: Your Honor --

17 THE COURT: -- your personal injury action at all.

18 MR. ROLL: Your Honor, I under --

19 THE COURT: So if to borrow that money now to pay  
20 the creditors and to not take anything out personally makes no  
21 sense. There's no logic to that at all. You're better off  
22 staying in the bankruptcy case.

23 MR. ROLL: Yeah, what Mr. Meyler is saying, Judge,  
24 he wants these people off his back.

25 MR. MEYLER: Your Honor, Mr. Geltzer sent me a

1 trustee's affirmation and they're proposing the debtor's motion  
2 to dismiss description case.

3 THE COURT: Right.

4 MR. MEYLER: I'm going to read everything from it.

5 THE COURT: You don't have to read it to me, I've  
6 read it already.

7 MR. MEYLER: Your Honor --

8 THE COURT: I've read it --

9 MR. MEYLER: And I spoke --

10 THE COURT: It's on the docket, I've read it  
11 already.

12 MR. MEYLER: Thank you, Your Honor. The thing  
13 about it is that when I spoke to Mr. Geltzer I said to Mr.  
14 Geltzer, sir, I have never wanted to go this route. Mr.  
15 Tsatis, he's right, was the one who led me down this road.

16 THE COURT: Right. But you're here now.

17 MR. MEYLER: And -- yes. And what is in it for  
18 you to keep -- I understand he's administering the law. But  
19 you're owning both my cases and you're telling me as a citizen  
20 of the United States who served in the military that you can  
21 own these two cases and do as you please and hire whatever  
22 attorney, and this is his intention to do whatever he wants to  
23 do, which makes me feel very uneasy while I am a disabled  
24 person. And I am truly disabled. My doctors have documented,  
25 I have done MRIs. And each time that I speak with them they

1 were not nice to me, they'll don't explain, they said we don't  
2 owe you anything. I have them on tape which they have  
3 downstairs which shows their demeanor towards me. And I said  
4 to them if you take something from someone, and I said I might  
5 not have all the knowledge as a lawyer but here's something  
6 very simple, I was duped by my attorney. I understand that you  
7 have the right to protect the creditors, as Mr. Geltzer --

8 THE COURT: Right.

9 MR. MEYLER: -- made it aware to me.

10 THE COURT: Right.

11 MR. MEYLER: But you don't have a right to own my  
12 two cases when I did not give up my right. And I would --

13 THE COURT: But by filing for bankruptcy you did.

14 MR. MEYLER: But I was ill-advised.

15 THE COURT: Well, but that may be --

16 MR. MEYLER: And --

17 THE COURT: -- that may be -- that may give you a  
18 claim against your lawyer.

19 MR. MEYLER: Yes.

20 THE COURT: Number one, I'm not sure that I agree,  
21 I believe that. Again I would have to hear from Mr. Tsatis.  
22 Maybe he advised you accurately and you didn't understand it.  
23 So that -- but even if he advised you wrongly, I am not sure  
24 that that is a basis for me to allow you to dismiss your case  
25 in the circumstance where you have assets that would be

1 sufficient to pay your creditors and there is no way after the  
2 case is dismissed for us to be -- have any assurance that those  
3 creditors would be paid.

4 MR. MEYLER: Mr. Broude has also said that I may  
5 have committed perjury. First of all, I let the Court also --

6 THE COURT: Okay. Well, Mister -- you know,  
7 there's been a lot of inflammatory language here which is  
8 probably not helpful, probably has not been helpful to the  
9 resolution of this case. But let's try to move beyond that,  
10 all right, and think about what would be in your best interest.  
11 That's what you need to think about. And --

12 MR. MEYLER: Yeah, the best interest I'm suffering  
13 financially and yet still I don't want somebody to make it seem  
14 as if I'm some irresponsible person who goes about trying to  
15 get money. I've never been a freeloader. Never will, never  
16 will be. I've always worked hard, I've paid my student loans  
17 when I could have, when I was able. Due to my disability I've  
18 encountered a lot that I never asked for. When the first case,  
19 when the first incident happened I reported, I had a lawyer on  
20 the case. The second one I went back to Mr. Tsatis. I've been  
21 truthful, I've been true for every move that I've done.

22 THE COURT: And I don't think that Mr. Geltzer or  
23 Mr. Broude is accusing of untruthfulness. Although and perjury  
24 was probably a poor -- it was probably a bad decision to write  
25 that in a pleading or a letter to the debtor under the

1 circumstances. But I think we heard Mr. Geltzer here today say  
2 that he's not saying that you've done anything wrong. Nobody's  
3 saying you've done anything wrong here today. I'm not saying  
4 it.

5 MR. MEYLER: And I do understand, Your Honor, he  
6 doesn't have to work on my behalf, but me as a person who's  
7 humble and explain and saying Mr. Geltzer, I have encountered  
8 these hardships, is there anything. He says I'm not entitled  
9 to tell you anything or work in your favor, so he has always  
10 put up opposition. Where I've also made you aware of that Ms.  
11 Elisofon filed the first case incorrectly and so she's  
12 overwhelmed. She passed my first case to a second attorney.  
13 That's why I've always said everything has to be proven by  
14 fact, right? But it seems to me like there's some collusion  
15 going on. All of them is corresponding with each other. I've  
16 never been cc'd by even my attorney. When I had to call my  
17 attorney and said to her, listen, why you cc'ing Mr. Geltzer  
18 and Mr. Tsatis on everything but you don't make me aware of  
19 anything. And it's she that I had asked for the loan. And  
20 this is my second time asking for a loan. I wouldn't ask for a  
21 loan if I wasn't in dire need.

22 THE COURT: Right. Well, okay. The only way --  
23 you cannot get a loan, while this bankruptcy case is pending  
24 you cannot get a loan for your personal use using your personal  
25 injury action as collateral. You cannot do it.

1 MR. MEYLER: Okay. And --

2 THE COURT: Because those assets are in trust for  
3 your creditors.

4 MR. MEYLER: Okay. And Mr. Geltzer is saying to  
5 me he can hire another attorney and all those things, he has a  
6 right to do that after Ms. Spence has had these cases and knows  
7 the beginning to the end. And that doesn't --

8 THE COURT: Okay.

9 MR. MEYLER: -- sit well with me.

10 THE COURT: I think I'm understanding what you're  
11 saying, that you want -- that you feel like you want to be in  
12 control of these actions.

13 MR. MEYLER: Yes, Your Honor.

14 THE COURT: And so what I would say is that if you  
15 want to -- if that's what you want to do, that you're going to  
16 have to see whether you can borrow enough money on those  
17 actions to pay off your creditors.

18 MR. MEYLER: Yes, Your Honor.

19 THE COURT: If you can't do that, then I don't see  
20 any way that this is going to -- and that may -- as much as you  
21 may wish to be free of Mr. Geltzer's control of this case, that  
22 still may not be in your long-term financial best interest, for  
23 you to borrow that money.

24 MR. MEYLER: But at least that gives me back some  
25 control.

1           THE COURT: Well, it gives you -- yes and no. It  
2 means that you -- that Mr. Geltzer is no longer involved but it  
3 does mean also that have to pay a lot of interest to this  
4 lender. And you're going to -- and that could eat up the  
5 entire amount of your settlement. So you may have to pay more  
6 than -- you're going to have to pay a lot more -- you're going  
7 to get a lot less out of the settlement than you ultimately  
8 would if you didn't borrow the money.

9           MR. MEYLER: Yes. And what --

10          THE COURT: Okay. On the other hand, in addition,  
11 as I think you heard Mr. Broude saying before, when the  
12 defendants or if the defendants in your personal injury action  
13 become aware that you have borrowed money on these actions,  
14 it's going to be a lot harder for you to get a good settlement  
15 from them. Because they're going to know that you're going to  
16 be desperate to pay them back.

17          MR. MEYLER: And what's stopping Mr. Geltzer from  
18 settling the cases for little or nothing?

19          THE COURT: Well, that's a reasonable question,  
20 Mr. Meyler.

21          MR. MEYLER: Thank you, Your Honor.

22          THE COURT: That's a very reasonable question.

23          MR. MEYLER: Because that's what I'm afraid of.

24          THE COURT: And I think the answer is that in  
25 order for him to settle the case he has to bring on a motion to



1 this Court for approval of the settlement when you would have a  
2 right to be heard. And if you think that they're not being  
3 settled for enough, then you would have the right to object to  
4 that. And then I would have to make a determination about  
5 whether this is reasonable.

6 MR. MEYLER: Okay. Since you --

7 THE COURT: But I do understand where you're  
8 coming from here.

9 MR. MEYLER: Uh-huh. Because my -- and I told you  
10 the truth, Your Honor, I'm afraid of collusion might be taking  
11 place.

12 THE COURT: Well, it is true I think that Mr.  
13 Geltzer in deciding whether to settle these actions is going to  
14 have to take into consideration mostly the interest of  
15 creditors.

16 MR. MEYLER: Yes.

17 THE COURT: And not your interest necessarily.

18 MR. MEYLER: Yeah. And then again I have  
19 suffered, I went through two accidents that have left me like  
20 this, and again it's only to his interest to the creditors,  
21 which I understand what you're saying but again all of them has  
22 never been from the day when I told my first lawyer and the way  
23 in which she dismissed the first case and then I suffered a  
24 second accident. Then if you look on the papers only one  
25 accident was listed, but I made aware of everything. And

1 that's why I'm saying when words like perjury is being used and  
2 different things, different tactics against me, it's not been  
3 nice and it's not -- doesn't make sense to me. That's why I  
4 say I'm overwhelmed. And even I speak with them and they go  
5 through, they say one thing verbally and then I tell them put  
6 it in writing now. There's violations. There has been  
7 violations. And yes, they have a right to work for the  
8 creditors only. But if any person's child went through these  
9 two accidents like this, I hope nobody's child goes through  
10 this. I'm only 42 years old, I have my whole life ahead of me.  
11 But I need money to survive and live. I used to be the  
12 breadwinner. I have family in Jamaica that I used to take care  
13 of. They also needed me, and I can't do -- and I know I have  
14 -- I come first now. And this is who I am as a man. And  
15 that's it, Your Honor. I don't know what else to do except say  
16 I strongly wanted this vacated and for Ms. Spence to go and  
17 depose and do what she needed to do, and I would back the  
18 creditors.

19 THE COURT: Well, how am I going to be sure of  
20 that?

21 MR. MEYLER: Your Honor, as I said, I only have my  
22 word to give you.

23 THE COURT: Yeah, I --

24 MR. MEYLER: And --

25 THE COURT: -- I don't think that's --

1 MR. MEYLER: And --

2 THE COURT: -- going to be enough.

3 MR. MEYLER: -- you don't know me, I don't know  
4 you, but as all the years, if anyone was to look up my record,  
5 when I borrowed any student loan I paid back Stafford, I paid  
6 back the bank, I paid back everyone. I worked within my means  
7 of doing things. I bought my mother a house when she was sick  
8 in Jamaica. And this is personal, but the thing about it was  
9 she took ill, she died in 1/3 of '07, and I took losses. And  
10 that's my personal matter. I walked away from things that I  
11 couldn't -- that were out of my control. But when it comes to  
12 responsibility I've never shirked my responsibility.

13 THE COURT: Well, let's do this. Why don't we  
14 wait -- I think there are two things I think should happen  
15 here. First, I think we should wait and see, we should adjourn  
16 this and see where the claims come in, see what level of claims  
17 are filed on the bar date, which is January 18th. I also think  
18 that we should try to get you a lawyer who can advise you about  
19 -- who can help you to figure out what would be in your best  
20 interest here. And you can go down to Mary Fox in the Pro Se  
21 Office, and she will have a list. And if that doesn't work  
22 out, we'll try to get you somebody through the City Bar Justice  
23 Project who can help you out. Because I think you need a  
24 lawyer, and a lawyer may be able to look at your whole  
25 situation and give you some advice that would help you out

1 here.

2 MR. MEYLER: Yes, Your Honor. Okay.

3 MR. GELTZER: Judge, can I just clarify a few  
4 things? Just as an incidental, we never accused him of  
5 committing perjury.

6 THE COURT: Well, I saw it in the --

7 MR. GELTZER: It said if the --

8 THE COURT: I saw it in the papers.

9 MR. GELTZER: -- schedules aren't true. It said  
10 in the letter if the schedules aren't true, that would be  
11 perjury. We never --

12 THE COURT: Yeah, well, that --

13 MR. GELTZER: -- accuse -- okay.

14 THE COURT: Why are you bandying about words like  
15 perjury? That doesn't -- that's not helpful.

16 MR. GELTZER: Okay. Now --

17 THE COURT: It's not a helpful approach.

18 MR. GELTZER: In addition, the next point I'd like  
19 to make is after we went through this several times with Mr.  
20 Meyler, at one point we did tell him we're not in a position to  
21 give him legal advice.

22 THE COURT: Right.

23 MR. GELTZER: Because that's what it was coming  
24 to. So we made that clear. What Mr. Meyler also has to  
25 understand, when the Court used the phrase hardship discharge

1 he needs to understand that the student loans, one of the rare  
2 times a student loan can be, is chargeable is if there's  
3 hardship with -- and it's only with respect to the student  
4 loans. And to do that he would have to bring separate  
5 lawsuits.

6 THE COURT: Right.

7 MR. GELTZER: He needs to understand that.

8 THE COURT: And they still would be entitled to  
9 participate --

10 MR. GELTZER: To be paid.

11 THE COURT: -- in a distribution from the personal  
12 injury action.

13 MR. GELTZER: Right. Now, I've been trying to  
14 retain Ms. Spence, the pre-petition personal injury counsel.

15 THE COURT: Right.

16 MR. GELTZER: I wrote to her on October 14th, I  
17 sent her a sample retention affidavit.

18 THE COURT: Right.

19 MR. GELTZER: I wrote to her again today because  
20 she hasn't returned it. She did respond to some letters but  
21 she hasn't returned that affidavit yet. I explained to Mr.  
22 Meyler at the 341 meeting that they'll have to call -- that yes  
23 I own the cause of action as the trustee, that I would retain -  
24 - I would contact Ms. Spence and find out if the causes of  
25 action had value for the estate and, if so, I would decide

1 whether to hire her or someone else and he would be -- and this  
2 is almost verbatim -- he would be required to cooperate with  
3 whomever I hire pursuant to a court order. So I'm trying. I  
4 have every intention of retaining her if she'll just get that  
5 back to me. And I explained to him that the case could not be  
6 settled without my permission and bankruptcy court approval.

7 I am curious about two things that were raised  
8 here, and the only reason I'm raising them here is because I'd  
9 like to inquire about them at some point. With respect to Mr.  
10 Meyler's income and expenses, he spent some money on the car he  
11 owns. But, Mr. Meyler, I just wonder if he's able to drive  
12 that car because of his vision problem as a result of the  
13 accident. I know if he drives the car, if he doesn't drive the  
14 car, I wonder why he owns the car --

15 THE COURT: You're saying he could give it up and  
16 then --

17 MR. GELTZER: That's a possibility.

18 THE COURT: -- and avoid an expense.

19 MR. GELTZER: Is he able to drive is the question.  
20 Does he drive the car?

21 THE COURT: Do you need to keep your car?

22 MR. MEYLER: Yes, Your Honor.

23 THE COURT: Do you drive or --

24 MR. MEYLER: I don't drive the car, Your Honor.

25 THE COURT: Does somebody else --

1 MR. MEYLER: The car is parked in my aunt's  
2 driveway for --

3 THE COURT: Sorry?

4 MR. MEYLER: For over a year and a half now it's  
5 parked in my aunt's driveway.

6 THE COURT: Okay, but is somebody else driving the  
7 car?

8 MR. MEYLER: My cousin used to drive the car, Your  
9 Honor. And I don't allow him to drive it anymore because he's  
10 young.

11 THE COURT: So that might be an expense for you to  
12 give up is what Mr. Geltzer is suggesting.

13 MR. MEYLER: Your Honor, again Mr. Tsatis told me  
14 that I would never lose my land, my car or my cases. Now, why  
15 is Mr. Geltzer bringing up my car now?

16 THE COURT: Well, the point we're making was that  
17 you have to borrow money because your income is not sufficient  
18 to meet your expenses. And he's not saying you have to give up  
19 your car.

20 MR. MEYLER: And I explained -- okay.

21 THE COURT: He's saying would you -- it might be  
22 helpful for you.

23 MR. MEYLER: I'm blind in one eye, Your Honor, due  
24 to the accident.

25 THE COURT: Right.

1 MR. MEYLER: But because I suffer seizures the  
2 doctors have me on medication and they keep saying to me  
3 there's hope. Stem cells also might help me in the future if I  
4 get enough money where I can go to New York Eye and Ear and do  
5 the stem cell, and therefore I'd be better. I've improved.  
6 I'm not 100% better. So therefore I'm looking ahead in the  
7 future where -- this car was like a baby to me. It only has  
8 50,000 miles on it.

9 THE COURT: Okay. Understood. I get your point,  
10 okay.

11 MR. MEYLER: Thank you.

12 MR. GELTZER: I was also wondering when he bought  
13 this house in Jamaica for his mother, when that was and with  
14 what funds.

15 MR. MEYLER: That was in 2005 or 2006, Your Honor,  
16 when I bought the home in Montego Bay for my mom.

17 MR. GELTZER: I would have other questions to ask  
18 as Your Honor would surmise.

19 THE COURT: Well, I don't, yeah, I don't think  
20 we're going to go into a 2004 examination on the record here.

21 MR. GELTZER: No, I --

22 THE COURT: And particularly if the personal  
23 injury action is going to be sufficient to pay off the  
24 creditors. If the PI action proceeds are sufficient to pay off  
25 the creditors, then the rest of those questions become



1 irrelevant.

2 MR. GELTZER: That's true. But that may be  
3 several years from now, and I don't have several years to wait  
4 if I want to pursue that line of inquiry with respect to the  
5 purchase of a house in 2006. Where'd the money come from,  
6 Judge? I don't know.

7 THE COURT: Okay. I think Mr. Meyler needs a  
8 lawyer.

9 MR. GELTZER: I agree.

10 THE COURT: All right. So I'm going to adjourn  
11 this, and I'm going to see if we can get an attorney for you.

12 MR. MEYLER: Thank you, Your Honor.

13 THE COURT: What I'd like you to do is stop by  
14 Mary Fox's office. She's the person -- I know you've seen her  
15 before.

16 MR. MEYLER: Uh-huh.

17 THE COURT: I believe you've seen her before; is  
18 that right?

19 MR. MEYLER: Yes, Your Honor.

20 THE COURT: Okay. Why don't you stop by her  
21 office, tell her I told you to do that, and see if she can  
22 recommend a lawyer, recommend a place for you to go to get a  
23 low-cost or no-cost attorney to advise you about how you can  
24 best protect your interests in this case.

25 MR. MEYLER: Okay.

1 THE COURT: So let's pick another date for this.

2 THE CLERK: Mary's at lunch right now.

3 THE COURT: Yes, she may not be back from her  
4 lunch break until after 1:00. But you can call her office  
5 also.

6 MR. MEYLER: Okay. I get the number down there?

7 THE COURT: He wants to know what the phone number  
8 is.

9 THE CLERK: 347-394-1738.

10 THE COURT: 347-394-1738.

11 THE CLERK: But if he can wait until --

12 MR. MEYLER: Thank you, Your Honor.

13 THE COURT: What time does she get back?

14 THE CLERK: She'd probably be back at 1:00.

15 THE COURT: Okay. If you can wait until 1:00 and  
16 speak to her, that would be better.

17 MR. MEYLER: Thank you.

18 THE COURT: All right. So let's pick another date  
19 for this in early February.

20 THE CLERK: February 3rd.

21 THE COURT: February 3rd.

22 THE CLERK: At 11:30.

23 [Court and Clerk confer.]

24 THE COURT: Okay, 11:30.

25 MR. MEYLER: Thank you, Your Honor.

1           MR. GELTZER: Your Honor, I'm not going to be able  
2 to be here on February 3rd. I have to be in Southern District.  
3 Mark could be here February 3rd.

4           THE COURT: All right. That's probably fine. But  
5 it's just going to be on the regular calendar.

6           MR. GREW: Okay.

7           THE COURT: It's not going to be a trial.

8           MR. GELTZER: You seem relieved, Judge.

9           THE COURT: What's that?

10          MR. GELTZER: You seem almost relieved. But  
11 that's all right.

12          THE COURT: All right. Okay.

13          MR. MEYLER: Thank you, Your Honor.

14          THE COURT: All right.

15          MR. MEYLER: Have a good day.

16          THE CLERK: All rise.

17 (Proceeding ended at 12:34 p.m.)

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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7 Sally Reidy

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